

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JEFFREY V. DAGENHART and SANDRA
DAGENHART, husband and wife and the
marital community comprised thereof,

Plaintiffs,

v.

WALMART, INC., a Delaware corporation,

Defendant.

NO.

(KITSAP COUNTY SUPERIOR COURT
CAUSE NO. 21-2-01849-18)

NOTICE OF REMOVAL BY
DEFENDANT WALMART INC.

(CLERK'S ACTION REQUIRED)

TO: CLERK OF THE COURT;

AND TO: PLAINTIFFS' COUNSEL OF RECORD

I. RELIEF REQUESTED

Defendant WALMART INC. ("Walmart") seeks to remove the above-captioned case from Kitsap County Superior Court in Washington State to the United States District Court for the Western District of Washington at Tacoma under 28 U.S.C. §§ 1332, 1441, and 1446.

II. STATEMENT OF FACTS

1. Underlying Incident

Plaintiffs JEFFREY V. DAGENHART and SANDRA DAGENHART (collectively, "Plaintiffs") allege that on March 2, 2019, they were shopping at a Walmart store located in Poulsbo, Washington, when Mr. Dagenhart was injured by a shelf-stocking cart. *See*

NOTICE OF REMOVAL TO FEDERAL COURT BY DEFENDANT
WALMART INC. - 1

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1 Declaration of Eddy Silverman, attached hereto as **Exhibit A**; *see also* Summons, Complaint,
2 and Confirmation of Service, attached hereto as **Exhibit B**.

3 2. Relevant Procedural Facts

4 Plaintiffs filed a Complaint in the Superior Court of Washington for Kitsap County on
5 December 9, 2021 and served Walmart on December 17, 2021. *See* Ex. B.

6 Walmart served its RCW 4.28.360 Request for Statement of Damages (“RSD”) on
7 Plaintiffs on December 16, 2021 and received Plaintiffs’ response thereto on December 23,
8 2021. *See* Plaintiffs’ response to Walmart’s RSD, attached hereto as **Exhibit C**. In their
9 response, Plaintiffs indicated special damages in excess of \$35,000 and general damages in the
10 amount of \$1,000,000. *Id.*

11 III. STATEMENT OF ISSUE

12 Whether this case may be properly removed to federal court where there is total
13 diversity between the parties and the amount in controversy is in excess of \$75,000 exclusive
14 of interest and costs according to Plaintiffs’ response to Walmart’s RSD.

15 IV. EVIDENCE RELIED UPON

16 This motion is based upon the records and pleadings on file with the Court, as well as
17 the Declaration of Eddy Silverman, Esq., attached hereto as Exhibit A.

18 V. ARGUMENT

19 A. This Case Is Removable Under 28 U.S.C. § 1332, Through Which This Court Has Original
20 Jurisdiction Over the Lawsuit Filed by Plaintiffs in Kitsap County Superior Court

21 The district courts shall have original jurisdiction of all civil actions (1) where the
22 parties in the case are diverse as defined by 28 U.S.C. § 1332(a)(1)-(4); (2) where the amount
23 in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs; and (3)
24 where removal is timely. The amount in controversy can either be evident “on the face” of the
25 Complaint or ascertained via some later pleading(s) or “other paper” in the record of the state

1 court proceeding. *See* 28 U.S.C. § 1446(b)(3); *see also Harris v. Bankers Life and Cas. Co.*,
 2 425 F.3d 689 (2005).

3 When and how removability is “ascertainable” matters with respect to whether removal
 4 is timely under 28 U.S.C. § 1446. There are, generally speaking, two viable “removal
 5 periods.” *See Harris*, 425 F.3d at 694. [1] A defendant has 30 days to remove a case if the
 6 removability of the case is evident on the face of the complaint; or [2] a defendant has 30 days
 7 beyond some later period from which it first becomes ascertainable that the case is removable.
 8 *See id.* (“[T]he first thirty-day requirement [to remove] is triggered by defendant’s receipt of
 9 an ‘initial pleading’ that reveals a basis for removal. If no ground for removal is evident in that
 10 pleading, the case is ‘not removable’ at that stage. In such case, the notice of removal may be
 11 filed within thirty days after the defendant receives [‘other paper’] from which it can
 12 ascertained...that removal is proper.”) (citations omitted).

13 In this case, (1) diversity between the parties is evident on the face of the Complaint;
 14 (2) the fact that the amount in controversy exceeds the sum or value of \$75,000 exclusive of
 15 interest and costs was not evident on the face of the Complaint, but *is now* evident from
 16 Plaintiffs’ response to Walmart’s RSD; and (3) Walmart is filing this Notice of Removal within
 17 30 days of service of receiving Plaintiffs’ aforementioned RSD response and therefore this
 18 Notice is timely and this case may be properly removed under 28 U.S.C. §§ 1446(b) and 1332.

19 1. There Is Diversity Between the Parties

20 Per the Complaint, Plaintiffs are all residents of Kitsap County, Washington. *See* Ex. B
 21 at ¶1.1. Thus, Plaintiffs are “citizens of” Washington State. Walmart is (a) incorporated in
 22 Delaware and (b) its principal place of business is in Arkansas. Thus, Walmart is “a citizen of”
 23 either Delaware or Arkansas, but not Washington State. *Accord* 28 U.S.C. § 1332(c)(1).
 24 Based on the foregoing, there is diversity between these parties as described in 28 U.S.C. §
 25 1332(a)(1).

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2. The Amount in Controversy Exceeds the Sum or Value Of \$75,000

Per Plaintiffs' response to Walmart's RSD, the amount in controversy in this matter is in excess of \$1,035,000. *See* Ex. C.

3. Walmart's Notice of Removal Is Timely

In this matter, the case stated by the initial pleading was not removable (no specific amounts claimed in Complaint); however, Plaintiffs' response to Walmart's RSD constitutes "other paper" within the meaning of 28 U.S.C. § 1446 from which it could first be ascertained that this case is removable. As this Notice is being filed within 30 days of receipt of that response/"other paper," this Notice is timely.¹ Additionally, even if this Court finds that the amount in controversy *is* evident on the face of the Complaint, this Notice is still timely because Plaintiffs served Walmart with the Complaint on December 17, 2021—less than 30 days prior to the date of this Notice's filing. *See* Ex. B.

B. Walmart's Notice of Removal Complies with All Applicable Local and Federal Procedural Rules Attendant to Removal

1. This Notice and Accompanying Documents Satisfy LCR 101

Pursuant to LCR 101(b), in cases removed from state court, the removing defendant shall file contemporaneously with the notice of removal:

- (1) A copy of the operative complaint, which must be attached as a separate "attachment" in the electronic filing system and labeled as the "complaint" or "amended complaint."
- (2) A certificate of service which lists all counsel and pro se parties who have appeared in the action with their contact information, including email address.
- (3) A copy of any Jury Demand filed in the state court, which must be filed as an attachment and labeled "Jury Demand."

¹ Walmart received Plaintiffs' RSD response on December 23, 2021 and is filing this Notice of Removal on January 14, 2022.

1 In addition to the foregoing, the removing defendant(s) shall, within 14 days of filing this
 2 Notice, or contemporaneously, file with the clerk of this Court black-on-white copies of all
 3 additional records and proceedings in the state court, together with verification that they are
 4 true and complete copies. LCR 101(c).

5 Walmart has filed and/or otherwise provided true and complete copies of all of the
 6 above referenced documents as required under local rules, including copies of all records and
 7 proceedings filed in the state court proceeding being removed by virtue of this petition. These
 8 documents/exhibits constitute and contain the entirety of the records and proceedings filed in
 9 Kitsap County Superior Court as of the date of filing this Notice. True and complete copies of
 10 all pleadings, records, and documents filed in the state court action are also attached hereto as

11 **Exhibit D.**

12 2. **Both the Federal and State Courts Are on Properly Notice of This Removal Action**

13 This Notice is properly filed in the United States District Court for the Western District
 14 of Washington because this Court embraces Kitsap County, the county in which the state court
 15 action is now pending. *See* 28 U.S.C. §§ 128(b) and 1441(a).

16 Pursuant to 28 U.S.C. §§ 1446(d), Walmart is filing a copy of this Notice with the Clerk
 17 of the Kitsap County Superior Court and is also serving a copy of this Notice on Plaintiffs'
 18 counsel of record in the state court action.

19 **VI. CONCLUSION**

20 Walmart hereby removes this case from the Kitsap County Superior Court to the United
 21 States District Court for the Western District of Washington at Tacoma pursuant to 28 U.S.C.
 22 §§ 1332, 1441, and 1446. By removing, Walmart does not waive any defenses, including but
 23 not limited to lack of personal jurisdiction, insufficiency of process, or insufficiency of service
 24 of process.

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1 DATED this 14th day of January, 2022.

2 WILLIAMS, KASTNER & GIBBS PLLC

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4 

5
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14 *Counsel for Defendant Walmart Inc.*

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the date indicated below, I caused service of a true and correct copy of the foregoing document in the manner indicated below to:

KITSAP LAW GROUP

☒ USPS

☒ E-mail

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Counsel for Plaintiffs

Signed at Seattle, Washington this 14th day of January, 2022.

WILLIAMS, KASTNER & GIBBS PLLC

/s/ Ryan McDade

Ryan McDade, Legal Assistant

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